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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/478,071	01/03/00	COPELAND	L 511-003

THE HALVORSON LAW FIRM
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HM22/1009

EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

10/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

09

Application No.

478071

Applicant(s)

Brown

Examiner

Mercery

Group Art Unit

166

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/02/91
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-47 is/are pending in the application.
- Of the above claim(s) 14-21, 35-47 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 and 22-34 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-47 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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Receipt is acknowledged of Request for Time, amendment and IDS of 7/2/01 each.

Applicant's election of hydrolysis species, wax esters and equivalents, and conditioners. However, the interview of 4/13/01 shows election of esterification, if not found, hydrogenation, and conditioner, if not found emollient in Paper No. 7 of 7/2/01 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 43-47 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

Claims 14-21, 35-42 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13, 22-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained--as to "initially", the language of claim 1, last sentence, is requested to be added to claim 22. "Further", in claims 1 and 2, implies, or can be

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presumed to mean, an added material, 6% is present in addition to the mix now claimed. If this is not intended, it is suggested to drop "Further".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-13, 22-34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laur et al 5679393.

Pre-treated mixes of hydrolysis products of organic materials (col. 2, 3) provides shea butter (col. 4, lines 66-line 18, col. 5) at the instant 6% + (48%) unsaponifiable as substantive compositions with anti free radical activity, for dermatological/cosmetic use. Actives, and emollient/conditioners are added (col. 7, line 7-line 4, col. 8). Shea butter, and the soy, avocado, olive sources, are all known as containing high % of their oils and fats as long chain carbon materials, as shown by applicant (p. 10, 11). Methods of providing benefits to skin are disclosed at col. 5, lines 40-61, examples 7-10, and claims 22, 23.

Claims 1-13, 22-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Koulbanis et al--FR 241775.

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See p. 5, translation 20-40% unsaponifiable, with jojoba, sunflower oil, as emollients. The compositions are prepared by mixing extracts; thus, were inherently pre-treated, at least by refinement--separation of the oil from the vegetable--and is recognized as being a treatment product (p. 4, 5).

Claims 1-9, 22-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Monnier et al 5705722.

The instant compositions are disclosed--(col. 1, last paragraph) of pre-processed organics (tall oil) of over 6% unsaponifiables (col. 2, top) 10-40%). Examples of UFA's of over C₁₈ are at Example 4. Pre-treatment includes hydro treating (Example 2) and other treatment process (col. 3, lines 25-43). Fragrances (aldehydes) are present (Table A).

Applicant's arguments filed 7/2/01 have been fully considered but they are not persuasive. Applicants request for allowability is not seen as overcoming prior art of record, as intended by applicants amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

September 19, 2001

A handwritten signature in black ink, appearing to read "Neal S. Levy". The signature is fluid and cursive, with a large initial "N" and "S".

NEIL S. LEVY
PRIMARY EXAMINER